

Adopted	Rejected
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COMMITTEE REPORT

YES:	10
NO:	0

MR. SPEAKER:

*Your Committee on Courts and Criminal Code, to which was referred Senate Bill 73, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1 Page 1, between the enacting clause and line 1, begin a new
- 2 paragraph and insert:
- 3 "SECTION 1. IC 9-24-11-3, AS AMENDED BY P.L.225-1999,
- 4 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 5 JULY 1, 2000]: Sec. 3. (a) A license issued to an individual less than
- 6 eighteen (18) years of age is a probationary license.
- 7 (b) An individual holds a probationary license subject to the
- 8 following conditions:
- 9 (1) Except as provided in IC 31-37-3-1, the individual may not
- 10 operate a motor vehicle during the curfew hours specified in
- 11 IC 31-37-3-2.
- 12 (2) During the ninety (90) days following the issuance of the
- 13 probationary license, the individual may not operate a motor
- 14 vehicle in which there are passengers, unless another individual
- 15 who:
- 16 (A) is at least twenty-one (21) years of age; and

(B) holds a valid operator's license issued under this article; is present in the front seat of the motor vehicle. **However, this subdivision does not apply if each passenger in the motor vehicle is a sibling of the individual who operates the motor vehicle.**

(3) The individual may operate a motor vehicle only if the individual and each occupant of the motor vehicle has a safety belt properly fastened about the occupant's body at all times when the motor vehicle is in motion.

(c) An individual who holds a probationary license issued under this section may receive an operator's license, a chauffeur's license, a public passenger chauffeur's license, or a commercial driver's license when the individual is at least eighteen (18) years of age.

(d) A probationary license issued under this section:

(1) is valid for not more than four (4) years from the date the license is issued; and

(2) may not be renewed."

Page 1, line 1, after "IC 9-30-5-5" insert ", AS AMENDED BY P.L.1-2000, SECTION 9,".

Page 1, line 4, delete "at least ten-hundredths percent (0.10%) of alcohol by" and insert "an alcohol concentration equivalent to at least ten-hundredths (0.10) gram of alcohol per:".

Page 1, delete line 5.

Page 2, after line 3, begin a new paragraph and insert:

"SECTION 3. IC 9-30-10-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 16. (a) A person who operates a motor vehicle:

(1) while the person's driving privileges are **validly** suspended under this chapter or IC 9-12-2 (repealed July 1, 1991); or

(2) in violation of restrictions imposed under this chapter or IC 9-12-2 (repealed July 1, 1991);

and after notice has been mailed to the person's last known address in compliance with IC 9-30-10-5, commits a Class D felony.

(b) In addition to any criminal penalty, a person who is convicted of a felony under subsection (a) forfeits the privilege of operating a motor vehicle for life. However, if judgment for conviction of a Class A misdemeanor is entered for an offense under subsection (a), the court may order a period of suspension of the convicted person's driving

1 privileges that is in addition to any suspension of driving privileges
2 already imposed upon the person."

3 SECTION 4. IC 16-31-3-14.5 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 14.5. The commission
5 may permanently revoke a license or certificate under procedures
6 provided by section 14 of this chapter if the individual who holds the
7 license or certificate issued under this title is convicted of any of the
8 following:

9 (1) Dealing in cocaine, ~~or~~ a narcotic drug, **or methamphetamine**
10 under IC 35-48-4-1.

11 (2) Dealing in a schedule I, II, or III controlled substance under
12 IC 35-48-4-2.

13 (3) Dealing in a schedule IV controlled substance under
14 IC 35-48-4-3.

15 (4) Dealing in a schedule V controlled substance under
16 IC 35-48-4-4.

17 (5) Dealing in a substance represented to be a controlled
18 substance under IC 35-48-4-4.5.

19 (6) Knowingly or intentionally manufacturing, advertising,
20 distributing, or possessing with intent to manufacture, advertise,
21 or distribute a substance represented to be a controlled substance
22 under IC 35-48-4-4.6.

23 (7) Dealing in a counterfeit substance under IC 35-48-4-5.

24 (8) Dealing in marijuana, hash oil, or hashish under
25 IC 35-48-4-10(b).

26 (9) Conspiracy under IC 35-41-5-2 to commit an offense listed in
27 subdivisions (1) through (8).

28 (10) Attempt under IC 35-41-5-1 to commit an offense listed in
29 subdivisions (1) through (8).

30 (11) A crime of violence (as defined in IC 35-50-1-2(a)).

31 (12) An offense in any other jurisdiction in which the elements of
32 the offense for which the conviction was entered are substantially
33 similar to the elements of an offense described under subdivisions
34 (1) through (11).

35 SECTION 5. IC 25-1-1.1-2 IS AMENDED TO READ AS
36 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 2. A board, a
37 commission, or a committee may suspend or revoke a license or
38 certificate issued under this title by the board, the commission, or the

committee if the individual who holds the license or certificate is convicted of any of the following:

- (1) Possession of cocaine, ~~or~~ a narcotic drug, **or methamphetamine** under IC 35-48-4-6.
- (2) Possession of a controlled substance under IC 35-48-4-7(a).
- (3) Fraudulently obtaining a controlled substance under IC 35-48-4-7(b).
- (4) Manufacture of paraphernalia as a Class D felony under IC 35-48-4-8.1(b).
- (5) Dealing in paraphernalia as a Class D felony under IC 35-48-4-8.5(b).
- (6) Possession of paraphernalia as a Class D felony under IC 35-48-4-8.3(b).
- (7) Possession of marijuana, hash oil, or hashish as a Class D felony under IC 35-48-4-11.
- (8) Maintaining a common nuisance under IC 35-48-4-13.
- (9) An offense relating to registration, labeling, and prescription forms under IC 35-48-4-14.
- (10) Conspiracy under IC 35-41-5-2 to commit an offense listed in subdivisions (1) through (9).
- (11) Attempt under IC 35-41-5-1 to commit an offense listed in subdivisions (1) through (9).
- (12) An offense in any other jurisdiction in which the elements of the offense for which the conviction was entered are substantially similar to the elements of an offense described under subdivisions (1) through (11).

SECTION 6. IC 25-1-1.1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 3. A board, a commission, or a committee shall revoke or suspend a license or certificate issued under this title by the board, the commission, or the committee if the individual who holds the license or certificate is convicted of any of the following:

- (1) Dealing in cocaine, ~~or~~ a narcotic drug, **or methamphetamine** under IC 35-48-4-1.
- (2) Dealing in a schedule I, II, or III controlled substance under IC 35-48-4-2.
- (3) Dealing in a schedule IV controlled substance under IC 35-48-4-3.

- 1 (4) Dealing in a schedule V controlled substance under
- 2 IC 35-48-4-4.
- 3 (5) Dealing in a substance represented to be a controlled
- 4 substance under IC 35-48-4-4.5.
- 5 (6) Knowingly or intentionally manufacturing, advertising,
- 6 distributing, or possessing with intent to manufacture, advertise,
- 7 or distribute a substance represented to be a controlled substance
- 8 under IC 35-48-4-4.6.
- 9 (7) Dealing in a counterfeit substance under IC 35-48-4-5.
- 10 (8) Dealing in marijuana, hash oil, or hashish under
- 11 IC 35-48-4-10(b).
- 12 (9) Conspiracy under IC 35-41-5-2 to commit an offense listed in
- 13 subdivisions (1) through (8).
- 14 (10) Attempt under IC 35-41-5-1 to commit an offense listed in
- 15 subdivisions (1) through (8).
- 16 (11) An offense in any other jurisdiction in which the elements of
- 17 the offense for which the conviction was entered are substantially
- 18 similar to the elements of an offense described under subdivisions
- 19 (1) through (10).
- 20 (12) A violation of any federal or state drug law or rule related to
- 21 wholesale legend drug distributors licensed under IC 25-26-14.
- 22 SECTION 7. IC 31-30-1-4 IS AMENDED TO READ AS
- 23 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 4. (a) The juvenile
- 24 court does not have jurisdiction over an individual for an alleged
- 25 violation of:
- 26 (1) IC 35-42-1-1 (murder);
- 27 (2) IC 35-42-3-2 (kidnapping);
- 28 (3) IC 35-42-4-1 (rape);
- 29 (4) IC 35-42-4-2 (criminal deviate conduct);
- 30 (5) IC 35-42-5-1 (robbery) if:
- 31 (A) the robbery was committed while armed with a deadly
- 32 weapon; or
- 33 (B) the robbery results in bodily injury or serious bodily
- 34 injury;
- 35 (6) IC 35-42-5-2 (carjacking);
- 36 (7) IC 35-45-9-3 (criminal gang activity);
- 37 (8) IC 35-45-9-4 (criminal gang intimidation);
- 38 (9) IC 35-47-2-1 (carrying a handgun without a license);

- (10) IC 35-47-10 (children and firearms);
- (11) IC 35-47-5-4.1 (dealing in a sawed-off shotgun);
- (12) IC 35-48-4-1 (dealing in cocaine, ~~or~~ a narcotic drug, **or methamphetamine**);
- (13) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled substance);
- (14) IC 35-48-4-3 (dealing in a schedule IV controlled substance);
- or
- (15) any offense that may be joined under IC 35-34-1-9(a)(2) with any crime listed in subdivisions (1) through (14);

if the individual was at least sixteen (16) years of age at the time of the alleged violation.

(b) Once an individual described in subsection (a) has been charged with any crime listed in subsection (a)(1) through (a)(15), the court having adult criminal jurisdiction shall retain jurisdiction over the case even if the individual pleads guilty to or is convicted of a lesser included offense. A plea of guilty to or a conviction of a lesser included offense does not vest jurisdiction in the juvenile court.

SECTION 8. IC 34-24-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 1. (a) The following may be seized:

(1) All vehicles (as defined by IC 35-41-1), if they are used or are intended for use by the person or persons in possession of them to transport or in any manner to facilitate the transportation of the following:

(A) A controlled substance for the purpose of committing, attempting to commit, or conspiring to commit any of the following:

- (i) Dealing in cocaine, ~~or~~ a narcotic drug, **or methamphetamine** (IC 35-48-4-1).
- (ii) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).
- (iii) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
- (iv) Dealing in a schedule V controlled substance (IC 35-48-4-4).
- (v) Dealing in a counterfeit substance (IC 35-48-4-5).
- (vi) Possession of cocaine, ~~or~~ a narcotic drug, **or**

- 1 **methamphetamine** (IC 35-48-4-6).
- 2 (vii) Dealing in paraphernalia (IC 35-48-4-8.5).
- 3 (viii) Dealing in marijuana, hash oil, or hashish
- 4 (IC 35-48-4-10).
- 5 (B) Any stolen (IC 35-43-4-2) or converted property
- 6 (IC 35-43-4-3) if the retail or repurchase value of that property
- 7 is one hundred dollars (\$100) or more.
- 8 (C) Any hazardous waste in violation of IC 13-30-6-6.
- 9 (2) All money, negotiable instruments, securities, weapons,
- 10 communications devices, or any property commonly used as
- 11 consideration for a violation of IC 35-48-4 (other than items
- 12 subject to forfeiture under IC 16-42-20-5 or IC 16-6-8.5-5.1
- 13 before its repeal):
- 14 (A) furnished or intended to be furnished by any person in
- 15 exchange for an act that is in violation of a criminal statute;
- 16 (B) used to facilitate any violation of a criminal statute; or
- 17 (C) traceable as proceeds of the violation of a criminal statute.
- 18 (3) Any portion of real or personal property purchased with
- 19 money that is traceable as a proceed of a violation of a criminal
- 20 statute.
- 21 (4) A vehicle that is used by a person to:
- 22 (A) commit, attempt to commit, or conspire to commit;
- 23 (B) facilitate the commission of; or
- 24 (C) escape from the commission of;
- 25 murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal
- 26 confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting
- 27 (IC 35-42-4-3), or child exploitation (IC 35-42-4-4).
- 28 (5) Real property owned by a person who uses it to commit any of
- 29 the following as a Class A felony, a Class B felony, or a Class C
- 30 felony:
- 31 (A) Dealing in cocaine, ~~or~~ a narcotic drug, **or**
- 32 **methamphetamine** (IC 35-48-4-1).
- 33 (B) Dealing in a schedule I, II, or III controlled substance
- 34 (IC 35-48-4-2).
- 35 (C) Dealing in a schedule IV controlled substance
- 36 (IC 35-48-4-3).
- 37 (D) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).
- 38 (6) Equipment and recordings used by a person to commit fraud

- 1 under IC 35-43-5-4(11).
- 2 (7) Recordings sold, rented, transported, or possessed by a person
- 3 in violation of IC 24-4-10.
- 4 (8) Property (as defined by IC 35-41-1-23) or an enterprise (as
- 5 defined by IC 35-45-6-1) that is the object of a corrupt business
- 6 influence violation (IC 35-45-6-2).
- 7 (9) Unlawful telecommunications devices (as defined in
- 8 IC 35-45-13-6) and plans, instructions, or publications used to
- 9 commit an offense under IC 35-45-13.
- 10 (b) A vehicle used by any person as a common or contract carrier in
- 11 the transaction of business as a common or contract carrier is not
- 12 subject to seizure under this section, unless it can be proven by a
- 13 preponderance of the evidence that the owner of the vehicle knowingly
- 14 permitted the vehicle to be used to engage in conduct that subjects it to
- 15 seizure under subsection (a).
- 16 (c) Money, negotiable instruments, securities, weapons,
- 17 communications devices, or any property commonly used as
- 18 consideration for a violation of IC 35-48-4 found near or on a person
- 19 who is committing, attempting to commit, or conspiring to commit any
- 20 of the following offenses shall be admitted into evidence in an action
- 21 under this chapter as prima facie evidence that the money, negotiable
- 22 instrument, security, or other thing of value is property that has been
- 23 used or was to have been used to facilitate the violation of a criminal
- 24 statute or is the proceeds of the violation of a criminal statute:
- 25 (1) IC 35-48-4-1 (dealing in cocaine, ~~or~~ a narcotic drug, **or**
- 26 **methamphetamine**).
- 27 (2) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled
- 28 substance).
- 29 (3) IC 35-48-4-3 (dealing in a schedule IV controlled substance).
- 30 (4) IC 35-48-4-4 (dealing in a schedule V controlled substance)
- 31 as a Class B felony.
- 32 (5) IC 35-48-4-6 (possession of cocaine, ~~or~~ a narcotic drug, **or**
- 33 **methamphetamine**) as a Class A felony, Class B felony, or Class
- 34 C felony.
- 35 (6) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as
- 36 a Class C felony.
- 37 SECTION 9. IC 35-38-1-7.1, AS AMENDED BY P.L.183-1999,
- 38 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

JULY 1, 2000]: Sec. 7.1. (a) In determining what sentence to impose for a crime, the court shall consider:

- (1) the risk that the person will commit another crime;
- (2) the nature and circumstances of the crime committed;
- (3) the person's:
 - (A) prior criminal record;
 - (B) character; and
 - (C) condition;
- (4) whether the victim of the crime was less than twelve (12) years of age or at least sixty-five (65) years of age;
- (5) whether the person violated a protective order issued against the person under IC 31-15 or IC 31-16 (or IC 31-1-11.5 before its repeal) or IC 34-26-2 (or IC 34-4-5.1 before its repeal); and
- (6) any oral or written statement made by a victim of the crime.

(b) The court may consider the following factors as aggravating circumstances or as favoring imposing consecutive terms of imprisonment:

- (1) The person has recently violated the conditions of any probation, parole, or pardon granted to the person.
- (2) The person has a history of criminal or delinquent activity.
- (3) The person is in need of correctional or rehabilitative treatment that can best be provided by commitment of the person to a penal facility.
- (4) Imposition of a reduced sentence or suspension of the sentence and imposition of probation would depreciate the seriousness of the crime.
- (5) The victim of the crime was less than twelve (12) years of age or at least sixty-five (65) years of age.
- (6) The victim of the crime was mentally or physically infirm.
- (7) The person committed a forcible felony while wearing a garment designed to resist the penetration of a bullet.
- (8) The person committed a sex crime listed in subsection (e) and:
 - (A) the crime created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV) and involved the sex organ of one (1) person and the mouth, anus, or sex organ of another person;
 - (B) the person had knowledge that the person was a carrier of HIV; and

- 1 (C) the person had received risk counseling as described in
2 subsection (g).
- 3 (9) The person committed an offense related to controlled
4 substances listed in subsection (f) if:
- 5 (A) the offense involved:
- 6 (i) the delivery by any person to another person; or
7 (ii) the use by any person on another person;
8 of a contaminated sharp (as defined in IC 16-41-16-2) or other
9 paraphernalia that creates an epidemiologically demonstrated
10 risk of transmission of HIV by involving percutaneous contact;
- 11 (B) the person had knowledge that the person was a carrier of
12 the human immunodeficiency virus (HIV); and
- 13 (C) the person had received risk counseling as described in
14 subsection (g).
- 15 (10) The person committed the offense in an area of a
16 consolidated or second class city that is designated as a public
17 safety improvement area by the Indiana criminal justice institute
18 under IC 36-8-19.5.
- 19 (11) The injury to or death of the victim of the crime was the
20 result of shaken baby syndrome (as defined in IC 16-41-40-2).
- 21 (12) Before the commission of the crime, the person administered
22 to the victim of the crime, without the victim's knowledge, a
23 sedating drug or a drug that had a hypnotic effect on the victim,
24 or the person had knowledge that such a drug had been
25 administered to the victim without the victim's knowledge.
- 26 (13) The person:
- 27 (A) committed trafficking with an inmate under IC 35-44-3-9;
28 and
29 (B) is an employee of the penal facility.
- 30 (c) The court may consider the following factors as mitigating
31 circumstances or as favoring suspending the sentence and imposing
32 probation:
- 33 (1) The crime neither caused nor threatened serious harm to
34 persons or property, or the person did not contemplate that it
35 would do so.
- 36 (2) The crime was the result of circumstances unlikely to recur.
- 37 (3) The victim of the crime induced or facilitated the offense.
- 38 (4) There are substantial grounds tending to excuse or justify the

- 1 crime, though failing to establish a defense.
- 2 (5) The person acted under strong provocation.
- 3 (6) The person has no history of delinquency or criminal activity,
- 4 or the person has led a law-abiding life for a substantial period
- 5 before commission of the crime.
- 6 (7) The person is likely to respond affirmatively to probation or
- 7 short term imprisonment.
- 8 (8) The character and attitudes of the person indicate that the
- 9 person is unlikely to commit another crime.
- 10 (9) The person has made or will make restitution to the victim of
- 11 the crime for the injury, damage, or loss sustained.
- 12 (10) Imprisonment of the person will result in undue hardship to
- 13 the person or the dependents of the person.
- 14 (11) The person was convicted of a crime involving the use of
- 15 force against a person who had repeatedly inflicted physical or
- 16 sexual abuse upon the convicted person and evidence shows that
- 17 the convicted person suffered from the effects of battery as a
- 18 result of the past course of conduct of the individual who is the
- 19 victim of the crime for which the person was convicted.
- 20 (d) The criteria listed in subsections (b) and (c) do not limit the
- 21 matters that the court may consider in determining the sentence.
- 22 (e) For the purposes of this article, the following crimes are
- 23 considered sex crimes:
- 24 (1) Rape (IC 35-42-4-1).
- 25 (2) Criminal deviate conduct (IC 35-42-4-2).
- 26 (3) Child molesting (IC 35-42-4-3).
- 27 (4) Child seduction (IC 35-42-4-7).
- 28 (5) Prostitution (IC 35-45-4-2).
- 29 (6) Patronizing a prostitute (IC 35-45-4-3).
- 30 (7) Incest (IC 35-46-1-3).
- 31 (8) Sexual misconduct with a minor under IC 35-42-4-9(a).
- 32 (f) For the purposes of this article, the following crimes are
- 33 considered offenses related to controlled substances:
- 34 (1) Dealing in cocaine, ~~or~~ a narcotic drug, **or methamphetamine**
- 35 (IC 35-48-4-1).
- 36 (2) Dealing in a schedule I, II, or III controlled substance (IC
- 37 35-48-4-2).
- 38 (3) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(4) Dealing in a schedule V controlled substance (IC 35-48-4-4).

(5) Possession of cocaine, ~~or~~ a narcotic drug, **or methamphetamine** (IC 35-48-4-6).

(6) Possession of a controlled substance (IC 35-48-4-7).

(7) Dealing in paraphernalia (IC 35-48-4-8.5).

(8) Possession of paraphernalia (IC 35-48-4-8.3).

(9) Offenses relating to registration (IC 35-48-4-14).

(g) For the purposes of this section, a person received risk counseling if the person had been:

(1) notified in person or in writing that tests have confirmed the presence of antibodies to the human immunodeficiency virus (HIV) in the person's blood; and

(2) warned of the behavior that can transmit HIV.

SECTION 10. IC 35-42-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 1. A person who:

(1) knowingly or intentionally kills another human being;

(2) kills another human being while committing or attempting to commit arson, burglary, child molesting, consumer product tampering, criminal deviate conduct, kidnapping, rape, robbery, or carjacking;

(3) kills another human being while committing or attempting to commit:

(A) dealing in cocaine, ~~or~~ a narcotic drug, **or methamphetamine** (IC 35-48-4-1);

(B) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2);

(C) dealing in a schedule IV controlled substance (IC 35-48-4-3); or

(D) dealing in a schedule V controlled substance; or

(4) knowingly or intentionally kills a fetus that has attained viability (as defined in IC 16-18-2-365);

commits murder, a felony.

SECTION 11. IC 35-45-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 1. As used in this chapter:

"Documentary material" means any document, drawing, photograph, recording, or other tangible item containing compiled data from which information can be either obtained or translated into a usable form.

1 "Enterprise" means:

- 2 (1) a sole proprietorship, corporation, limited liability company,
3 partnership, business trust, or governmental entity; or
4 (2) a union, an association, or a group, whether a legal entity or
5 merely associated in fact.

6 "Pattern of racketeering activity" means engaging in at least two (2)
7 incidents of racketeering activity that have the same or similar intent,
8 result, accomplice, victim, or method of commission, or that are
9 otherwise interrelated by distinguishing characteristics that are not
10 isolated incidents. However, the incidents are a pattern of racketeering
11 activity only if at least one (1) of the incidents occurred after August
12 31, 1980, and if the last of the incidents occurred within five (5) years
13 after a prior incident of racketeering activity.

14 "Racketeering activity" means to commit, to attempt to commit, to
15 conspire to commit a violation of, or aiding and abetting in a violation
16 of any of the following:

- 17 (1) A provision of IC 23-2-1, or of a rule or order issued under
18 IC 23-2-1.
19 (2) A violation of IC 35-45-9.
20 (3) A violation of IC 35-47.
21 (4) A violation of IC 35-49-3.
22 (5) Murder (IC 35-42-1-1).
23 (6) Battery as a Class C felony (IC 35-42-2-1).
24 (7) Kidnapping (IC 35-42-3-2).
25 (8) Child exploitation (IC 35-42-4-4).
26 (9) Robbery (IC 35-42-5-1).
27 (10) Carjacking (IC 35-42-5-2).
28 (11) Arson (IC 35-43-1-1).
29 (12) Burglary (IC 35-43-2-1).
30 (13) Theft (IC 35-43-4-2).
31 (14) Receiving stolen property (IC 35-43-4-2).
32 (15) Forgery (IC 35-43-5-2).
33 (16) Fraud (IC 35-43-5-4(1) through IC 35-43-5-4(9)).
34 (17) Bribery (IC 35-44-1-1).
35 (18) Official misconduct (IC 35-44-1-2).
36 (19) Conflict of interest (IC 35-44-1-3).
37 (20) Perjury (IC 35-44-2-1).
38 (21) Obstruction of justice (IC 35-44-3-4).

- 1 (22) Intimidation (IC 35-45-2-1).
- 2 (23) Promoting prostitution (IC 35-45-4-4).
- 3 (24) Promoting professional gambling (IC 35-45-5-4).
- 4 (25) Dealing in cocaine, ~~or~~ a narcotic drug, **or**
- 5 **methamphetamine** (IC 35-48-4-1).
- 6 (26) Dealing in a schedule I, II, or III controlled substance
- 7 (IC 35-48-4-2).
- 8 (27) Dealing in a schedule IV controlled substance
- 9 (IC 35-48-4-3).
- 10 (28) Dealing in a schedule V controlled substance (IC 35-48-4-4).
- 11 (29) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).
- 12 (30) Money laundering (IC 35-45-15-5).
- 13 SECTION 12. IC 35-48-4-1 IS AMENDED TO READ AS
- 14 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 1. (a) A person who:
- 15 (1) knowingly or intentionally:
- 16 (A) manufactures;
- 17 (B) finances the manufacture of;
- 18 (C) delivers; or
- 19 (D) finances the delivery of;
- 20 cocaine, ~~or~~ a narcotic drug, **or methamphetamine**, pure or
- 21 adulterated, classified in schedule I or II; or
- 22 (2) possesses, with intent to:
- 23 (A) manufacture;
- 24 (B) finance the manufacture of;
- 25 (C) deliver; or
- 26 (D) finance the delivery of;
- 27 cocaine, ~~or~~ a narcotic drug, **or methamphetamine**, pure or
- 28 adulterated, classified in schedule I or II;
- 29 commits dealing in cocaine, ~~or~~ a narcotic drug, **or methamphetamine**,
- 30 a Class B felony, except as provided in subsection (b).
- 31 (b) The offense is a Class A felony if:
- 32 (1) the amount of the drug involved weighs three (3) grams or
- 33 more;
- 34 (2) the person:
- 35 (A) delivered; or
- 36 (B) financed the delivery of;
- 37 the drug to a person under eighteen (18) years of age at least three
- 38 (3) years junior to the person; or

(3) the person delivered or financed the delivery of the drug:

(A) on a school bus; or

(B) in, on, or within one thousand (1,000) feet of:

(i) school property;

(ii) a public park; or

(iii) a family housing complex.

SECTION 13. IC 35-48-4-6, AS AMENDED BY P.L.188-1999, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 6. (a) A person who, without a valid prescription or order of a practitioner acting in the course of the practitioner's professional practice, knowingly or intentionally possesses cocaine (pure or adulterated), ~~or~~ a narcotic drug (pure or adulterated), **or methamphetamine (pure or adulterated)** classified in schedule I or II commits possession of cocaine, ~~or~~ a narcotic drug, **or methamphetamine**, a Class D felony, except as provided in subsection (b).

(b) The offense is:

(1) a Class C felony if:

(A) the amount of the drug involved (pure or adulterated) weighs three (3) grams or more; or

(B) the person was also in possession of a firearm (as defined in IC 35-47-1-5);

(2) a Class B felony if the person in possession of the cocaine, ~~or~~ narcotic drug, **or methamphetamine** possesses less than three (3) grams of pure or adulterated cocaine or narcotic drug:

(A) on a school bus; or

(B) in, on, or within one thousand (1,000) feet of:

(i) school property;

(ii) a public park; or

(iii) a family housing complex; and

(3) a Class A felony if the person possesses the cocaine, ~~or~~ narcotic drug, **or methamphetamine** in an amount (pure or adulterated) weighing at least three (3) grams:

(A) on a school bus; or

(B) in, on, or within one thousand (1,000) feet of:

(i) school property;

(ii) a public park; or

(iii) a family housing complex.

1 SECTION 14. IC 35-50-2-2, AS AMENDED BY P.L.188-1999,
 2 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2000]: Sec. 2. (a) The court may suspend any part of a
 4 sentence for a felony, except as provided in this section or in section
 5 2.1 of this chapter.

6 (b) With respect to the following crimes listed in this subsection, the
 7 court may suspend only that part of the sentence that is in excess of the
 8 minimum sentence:

9 (1) The crime committed was a Class A or Class B felony and the
 10 person has a prior unrelated felony conviction.

11 (2) The crime committed was a Class C felony and less than seven
 12 (7) years have elapsed between the date the person was
 13 discharged from probation, imprisonment, or parole, whichever
 14 is later, for a prior unrelated felony conviction and the date the
 15 person committed the Class C felony for which the person is
 16 being sentenced.

17 (3) The crime committed was a Class D felony and less than three
 18 (3) years have elapsed between the date the person was
 19 discharged from probation, imprisonment, or parole, whichever
 20 is later, for a prior unrelated felony conviction and the date the
 21 person committed the Class D felony for which the person is
 22 being sentenced. However, the court may suspend the minimum
 23 sentence for the crime only if the court orders home detention
 24 under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum
 25 sentence specified for the crime under this chapter.

26 (4) The felony committed was:

27 (A) murder (IC 35-42-1-1);

28 (B) battery (IC 35-42-2-1) with a deadly weapon;

29 (C) sexual battery (IC 35-42-4-8) with a deadly weapon;

30 (D) kidnapping (IC 35-42-3-2);

31 (E) confinement (IC 35-42-3-3) with a deadly weapon;

32 (F) rape (IC 35-42-4-1) as a Class A felony;

33 (G) criminal deviate conduct (IC 35-42-4-2) as a Class A
 34 felony;

35 (H) child molesting (IC 35-42-4-3) as a Class A or Class B
 36 felony;

37 (I) robbery (IC 35-42-5-1) resulting in serious bodily injury or
 38 with a deadly weapon;

- 1 (J) arson (IC 35-43-1-1) for hire or resulting in serious bodily
 2 injury;
 3 (K) burglary (IC 35-43-2-1) resulting in serious bodily injury
 4 or with a deadly weapon;
 5 (L) resisting law enforcement (IC 35-44-3-3) with a deadly
 6 weapon;
 7 (M) escape (IC 35-44-3-5) with a deadly weapon;
 8 (N) rioting (IC 35-45-1-2) with a deadly weapon;
 9 (O) dealing in cocaine, ~~or~~ a narcotic drug, **or**
 10 **methamphetamine** (IC 35-48-4-1) as a Class A felony;
 11 (P) dealing in a schedule I, II, or III controlled substance (IC
 12 35-48-4-2) if the amount of controlled substance involved has
 13 an aggregate weight of three (3) grams or more;
 14 (Q) an offense under IC 9-30-5 (operating a vehicle while
 15 intoxicated) and the person who committed the offense has
 16 accumulated at least two (2) prior unrelated convictions under
 17 IC 9-30-5; or
 18 (R) aggravated battery (IC 35-42-2-1.5).
- 19 (c) Except as provided in subsection (e), whenever the court
 20 suspends a sentence for a felony, it shall place the person on probation
 21 under IC 35-38-2 for a fixed period to end not later than the date that
 22 the maximum sentence that may be imposed for the felony will expire.
- 23 (d) The minimum sentence for a person convicted of voluntary
 24 manslaughter may not be suspended unless the court finds at the
 25 sentencing hearing that the crime was not committed by means of a
 26 deadly weapon.
- 27 (e) Whenever the court suspends that part of an offender's (as
 28 defined in IC 5-2-12-4) sentence that is suspendible under subsection
 29 (b), the court shall place the offender on probation under IC 35-38-2 for
 30 not more than ten (10) years.
- 31 (f) An additional term of imprisonment imposed under
 32 IC 35-50-2-11 may not be suspended.
- 33 (g) A term of imprisonment imposed under IC 35-47-10-6 or
 34 IC 35-47-10-7 may not be suspended if the commission of the offense
 35 was knowing or intentional.
- 36 (h) A term of imprisonment imposed for an offense under
 37 IC 35-48-4-6(b)(1)(B) may not be suspended.
- 38 SECTION 15. IC 35-50-2-9 IS AMENDED TO READ AS

FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 9. (a) The state may seek either a death sentence or a sentence of life imprisonment without parole for murder by alleging, on a page separate from the rest of the charging instrument, the existence of at least one (1) of the aggravating circumstances listed in subsection (b). In the sentencing hearing after a person is convicted of murder, the state must prove beyond a reasonable doubt the existence of at least one (1) of the aggravating circumstances alleged. However, the state may not proceed against a defendant under this section if a court determines at a pretrial hearing under IC 35-36-9 that the defendant is a mentally retarded individual.

(b) The aggravating circumstances are as follows:

(1) The defendant committed the murder by intentionally killing the victim while committing or attempting to commit any of the following:

(A) Arson (IC 35-43-1-1).

(B) Burglary (IC 35-43-2-1).

(C) Child molesting (IC 35-42-4-3).

(D) Criminal deviate conduct (IC 35-42-4-2).

(E) Kidnapping (IC 35-42-3-2).

(F) Rape (IC 35-42-4-1).

(G) Robbery (IC 35-42-5-1).

(H) Carjacking (IC 35-42-5-2).

(I) Criminal gang activity (IC 35-45-9-3).

(J) Dealing in cocaine, ~~or~~ a narcotic drug, **or methamphetamine** (IC 35-48-4-1).

(2) The defendant committed the murder by the unlawful detonation of an explosive with intent to injure person or damage property.

(3) The defendant committed the murder by lying in wait.

(4) The defendant who committed the murder was hired to kill.

(5) The defendant committed the murder by hiring another person to kill.

(6) The victim of the murder was a corrections employee, probation officer, parole officer, community corrections worker, home detention officer, fireman, judge, or law enforcement officer, and either:

(A) the victim was acting in the course of duty; or

(B) the murder was motivated by an act the victim performed

- 1 while acting in the course of duty.
- 2 (7) The defendant has been convicted of another murder.
- 3 (8) The defendant has committed another murder, at any time,
- 4 regardless of whether the defendant has been convicted of that
- 5 other murder.
- 6 (9) The defendant was:
- 7 (A) under the custody of the department of correction;
- 8 (B) under the custody of a county sheriff;
- 9 (C) on probation after receiving a sentence for the commission
- 10 of a felony; or
- 11 (D) on parole;
- 12 at the time the murder was committed.
- 13 (10) The defendant dismembered the victim.
- 14 (11) The defendant burned, mutilated, or tortured the victim while
- 15 the victim was alive.
- 16 (12) The victim of the murder was less than twelve (12) years of
- 17 age.
- 18 (13) The victim was a victim of any of the following offenses for
- 19 which the defendant was convicted:
- 20 (A) Battery as a Class D felony or as a Class C felony under
- 21 IC 35-42-2-1.
- 22 (B) Kidnapping (IC 35-42-3-2).
- 23 (C) Criminal confinement (IC 35-42-3-3).
- 24 (D) A sex crime under IC 35-42-4.
- 25 (14) The victim of the murder was listed by the state or known by
- 26 the defendant to be a witness against the defendant and the
- 27 defendant committed the murder with the intent to prevent the
- 28 person from testifying.
- 29 (15) The defendant committed the murder by intentionally
- 30 discharging a firearm (as defined in IC 35-47-1-5):
- 31 (A) into an inhabited dwelling; or
- 32 (B) from a vehicle.
- 33 (16) The victim of the murder was pregnant and the murder
- 34 resulted in the intentional killing of a fetus that has attained
- 35 viability (as defined in IC 16-18-2-365).
- 36 (c) The mitigating circumstances that may be considered under this
- 37 section are as follows:
- 38 (1) The defendant has no significant history of prior criminal

- 1 conduct.
- 2 (2) The defendant was under the influence of extreme mental or
- 3 emotional disturbance when the murder was committed.
- 4 (3) The victim was a participant in or consented to the defendant's
- 5 conduct.
- 6 (4) The defendant was an accomplice in a murder committed by
- 7 another person, and the defendant's participation was relatively
- 8 minor.
- 9 (5) The defendant acted under the substantial domination of
- 10 another person.
- 11 (6) The defendant's capacity to appreciate the criminality of the
- 12 defendant's conduct or to conform that conduct to the
- 13 requirements of law was substantially impaired as a result of
- 14 mental disease or defect or of intoxication.
- 15 (7) The defendant was less than eighteen (18) years of age at the
- 16 time the murder was committed.
- 17 (8) Any other circumstances appropriate for consideration.
- 18 (d) If the defendant was convicted of murder in a jury trial, the jury
- 19 shall reconvene for the sentencing hearing. If the trial was to the court,
- 20 or the judgment was entered on a guilty plea, the court alone shall
- 21 conduct the sentencing hearing. The jury or the court may consider all
- 22 the evidence introduced at the trial stage of the proceedings, together
- 23 with new evidence presented at the sentencing hearing. The court shall
- 24 instruct the jury concerning the statutory penalties for murder and any
- 25 other offenses for which the defendant was convicted, the potential for
- 26 consecutive or concurrent sentencing, and the availability of good time
- 27 credit and clemency. The defendant may present any additional
- 28 evidence relevant to:
- 29 (1) the aggravating circumstances alleged; or
- 30 (2) any of the mitigating circumstances listed in subsection (c).
- 31 (e) Except as provided by IC 35-36-9, if the hearing is by jury, the
- 32 jury shall recommend to the court whether the death penalty or life
- 33 imprisonment without parole, or neither, should be imposed. The jury
- 34 may recommend:
- 35 (1) the death penalty; or
- 36 (2) life imprisonment without parole;
- 37 only if it makes the findings described in subsection (k). The court shall
- 38 make the final determination of the sentence, after considering the

1 jury's recommendation, and the sentence shall be based on the same
2 standards that the jury was required to consider. The court is not bound
3 by the jury's recommendation. In making the final determination of the
4 sentence after receiving the jury's recommendation, the court may
5 receive evidence of the crime's impact on members of the victim's
6 family.

7 (f) If a jury is unable to agree on a sentence recommendation after
8 reasonable deliberations, the court shall discharge the jury and proceed
9 as if the hearing had been to the court alone.

10 (g) If the hearing is to the court alone, except as provided by
11 IC 35-36-9, the court shall:

12 (1) sentence the defendant to death; or

13 (2) impose a term of life imprisonment without parole;
14 only if it makes the findings described in subsection (k).

15 (h) If a court sentences a defendant to death, the court shall order
16 the defendant's execution to be carried out not later than one (1) year
17 and one (1) day after the date the defendant was convicted. The
18 supreme court has exclusive jurisdiction to stay the execution of a
19 death sentence. If the supreme court stays the execution of a death
20 sentence, the supreme court shall order a new date for the defendant's
21 execution.

22 (i) If a person sentenced to death by a court files a petition for
23 post-conviction relief, the court, not later than ninety (90) days after the
24 date the petition is filed, shall set a date to hold a hearing to consider
25 the petition. If a court does not, within the ninety (90) day period, set
26 the date to hold the hearing to consider the petition, the court's failure
27 to set the hearing date is not a basis for additional post-conviction
28 relief. The attorney general shall answer the petition for post-conviction
29 relief on behalf of the state. At the request of the attorney general, a
30 prosecuting attorney shall assist the attorney general. The court shall
31 enter written findings of fact and conclusions of law concerning the
32 petition not later than ninety (90) days after the date the hearing
33 concludes. However, if the court determines that the petition is without
34 merit, the court may dismiss the petition within ninety (90) days
35 without conducting a hearing under this subsection.

36 (j) A death sentence is subject to automatic review by the supreme
37 court. The review, which shall be heard under rules adopted by the
38 supreme court, shall be given priority over all other cases. The supreme

- 1 court's review must take into consideration all claims that the:
- 2 (1) conviction or sentence was in violation of the:
- 3 (A) Constitution of the State of Indiana; or
- 4 (B) Constitution of the United States;
- 5 (2) sentencing court was without jurisdiction to impose a
- 6 sentence; and
- 7 (3) sentence:
- 8 (A) exceeds the maximum sentence authorized by law; or
- 9 (B) is otherwise erroneous.
- 10 If the supreme court cannot complete its review by the date set by the
- 11 sentencing court for the defendant's execution under subsection (h), the
- 12 supreme court shall stay the execution of the death sentence and set a
- 13 new date to carry out the defendant's execution.
- 14 (k) Before a sentence may be imposed under this section, the jury,
- 15 in a proceeding under subsection (e), or the court, in a proceeding
- 16 under subsection (g), must find that:
- 17 (1) the state has proved beyond a reasonable doubt that at least
- 18 one (1) of the aggravating circumstances listed in subsection (b)
- 19 exists; and
- 20 (2) any mitigating circumstances that exist are outweighed by the
- 21 aggravating circumstance or circumstances.".
- (Reference is to SB 73 as printed January 21, 2000.)

and when so amended that said bill do pass.

Representative Dvorak